

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4185 of 1999

WITH

CRIMINAL MISC. APPLICATION NO.4187 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LALIT NATVARLAL JAJU

Versus

FULCHANDBHAI GORSARAMJI SHARMA

Appearance:

MR DIPAK R DAVE for Petitioners
MR MUKESH R SHAH for Respondent No. 1
MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT
Date of decision: 25/04/2000

ORAL JUDGEMENT

1. These are applications under section 482 of the Criminal Procedure Code for quashing the process issued by the learned JMFC in respect of the present petitioners

who are original accused nos.2 and 3.

2. The first respondent herein in both the applications, as the complainant, filed two separate complaints before the learned JMFC under section 138 of the Negotiable Instruments Act in respect of two separate dishonoured cheques, wherein the present petitioners were accused nos.2 and 3 respectively. The learned Magistrate issued process against the accused including the present petitioners. The issuance of process against the present petitioners is the subject matter of challenge before this court in the present applications.

3. The short contention raised in the present applications is to the effect that the present petitioners being original accused nos.2 and 3 have absolutely no nexus or connection with the alleged offence, that no allegation is made against them by the complainant, that they are not the drawers of the cheques in question and that this is an admitted position on the face of the record.

4. When the original complaint filed by the complainant is referred to, it is found that the allegations so far as the issuance of the cheques is concerned, are vague and general, and are made collectively against all the three accused. The only significant aspect of the complaint is that it neither mentions nor clarifies as to who was the drawer of the cheque. It does not even imply that all the three accused were jointly the drawers of the cheques in question.

5. It is obvious on a plain reading of section 138 of the Negotiable Instruments Act that the cause of action of filing of the complaint and initiating the prosecution would arise only upon service of notice as contemplated by the said section. The complainant has issued two separate notices (both dated 12th April 1999) in respect of the two dishonoured cheques. In both the said statutory notices, which are served on all the three accused, it is specifically averred that it was the accused no.1 who had issued the cheques in question, and so far as the issuance of the cheques is concerned, absolutely no allegation is made against the accused nos.2 and 3 who are the present petitioners. It is, therefore, obvious that the complainant has no cause of action within the meaning of section 138 of the Negotiable Instruments Act against the accused nos.2 and 3.

6. The Supreme Court has discussed in the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar, reported in JT 1998(6) SC 48, the concept of the cause of action as applicable to sections 138 and 142 of the Negotiable Instruments Act. The relevant observations in the said decision, for the purpose of the present decision, are to the effect that it is not merely the issuance of the cheque or the dishonour of the cheque which gives a cause of action for the prosecution under section 138 of the said Act, although they form part of the bundle of facts constituting the cause of action. However, the most important aspect of the "cause of action" is the issuance of the notice contemplated by section 138 of the Negotiable Instruments Act. I emphasise this aspect only for a limited purpose of placing reliance upon the statutory notice issued by the complainant himself, which although issued against all the three accused, names only accused no.1 as the drawer of the cheques. It is for this reason that I am of the opinion that the accused nos.2 and 3 cannot be legitimately be prosecuted in respect of any cause of action which has accrued against them in favour of the complainant under section 138 of the Negotiable Instruments Act.

7. Another aspect to be noted is that although the aforesaid facts are duly emphasised in the memo of the present applications, the first respondent herein-the original complainant has not chosen to rebut any of the said factual averments by any affidavit-in-reply.

8. I have, therefore, no hesitation in concluding that the issuance of process by the learned Magistrate against the accused nos.2 and 3 is misconceived, illegal and deserves to be quashed and set aside. It is accordingly so held and directed. These applications are accordingly allowed and rule is made absolute.
